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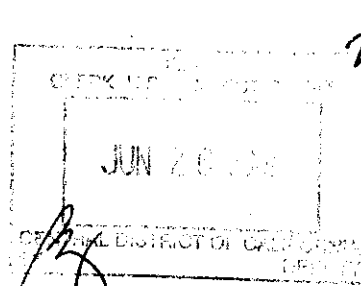
PRISON IDENTIFICATION/BOOKING NO.

Encino, CA 91436

ADDRESS OR PLACE OF CONFINEMENT

818-986-808 (Fax: 818-789-0947)

Note: If represented by an attorney, provide name, address & telephone number. It is your responsibility to notify the Clerk of Court in writing of any change of address.



UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

RITA LAVELLE,

FULL NAME OF MOVANT  
 (Include name under which you were convicted)

Petitioner.

CASE NUMBER:

CV

To be supplied by the Clerk of the United States District Court

CR

04-00374-SJO

Criminal case under which sentence was imposed.

**MOTION TO VACATE, SET ASIDE OR  
 CORRECT SENTENCE BY A PERSON IN  
 FEDERAL CUSTODY  
 28 U.S.C § 2255**

INSTRUCTIONS - READ CAREFULLY

This motion must be legibly handwritten or typewritten and signed by the movant under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form. Where more room is needed to answer any questions use reverse side of sheet.

Additional pages are not permitted. No citation or authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.

Upon receipt, your motion will be filed if it is in proper order. **NO FEE** is required with this motion

If you do not have the necessary funds for transcripts, counsel, appeal, and other costs connected with a motion of this type, you may request permission to proceed in forma pauperis, in which event you must execute the declaration on the last page, setting forth information establishing your inability to pay costs. If you wish to proceed in forma pauperis, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.

Only judgments entered by one court may be challenged in a single motion. If you seek to challenge judgments entered by different judges or divisions either in the same district or in a different districts, you must file separate motions as to each judgment.

Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the motion you file seeking relief from any judgment of conviction.

When the motion is fully completed, the original and three (3) copies must be mailed to the Clerk of the United States District Court, whose address is 312 North Spring Street, Los Angeles, California 90012.

MOTION

1. Name and location of court which entered judgment of conviction under attack: \_\_\_\_\_  
U.S. DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

2. Date of judgment of conviction: January 14, 2005

3. Length of sentence: 15 Months Sentencing judge: S. James Otero

4. Nature of offense or offenses for which you were convicted: (1) COUNT I: wire fraud (18 USC Sec. 1343, 2(b)); (2) Making false statement to FBI (18 USC Sec. 1001); (3) Making false statement to FBI (18 USC Sec. 1001)

5. What was your plea? (check one)

- ☒ Not guilty  
☐ Guilty  
☐ Nolo Contendere

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

6. Kind of trial: (check one)

- ☒ Jury  
☐ Judge only

7. Did you testify at the trial?

- ☒ Yes ☐ No

8. Did you appeal from the judgment of conviction?

- ☒ Yes ☐ No

9. If you did appeal, answer the following:

- (a) Name of court 9th U.S. Circuit Court of Appeals
- (b) Result Docket 05-50034 (aff'd in part; reversed in part and remanded);  
Docket 06-050208 (still pending)
- (c) Date of result Docket 05-50034 (June 6, 2005)

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any federal court?

☐ Yes ☒ No

11. If your answer to question number 10 was "yes", give the following information:

- (a) (1) Name of Court \_\_\_\_\_
- (2) Nature of proceeding \_\_\_\_\_
- (3) Grounds raised \_\_\_\_\_
- (4) Did you receive an evidentiary hearing on your petition, application or motion?  
☐ Yes ☐ No
- (5) Result \_\_\_\_\_
- (6) Date of result \_\_\_\_\_
- (b) (1) Name of Court \_\_\_\_\_
- (2) Nature of proceeding \_\_\_\_\_
- (3) Grounds raised \_\_\_\_\_
- (4) Did you receive an evidentiary hearing on your petition, application or motion?  
☐ Yes ☐ No
- (5) Result \_\_\_\_\_
- (6) Date of result \_\_\_\_\_
- (c) (1) Name of Court \_\_\_\_\_
- (2) Nature of proceeding \_\_\_\_\_
- (3) Grounds raised \_\_\_\_\_
- (4) Did you receive an evidentiary hearing on your petition, application or motion?  
☐ Yes ☐ No

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

(d) Did you appeal, to an appellate federal court having jurisdiction, the results of action taken on any petition, application or motion?

(1) First petition, etc. ☐ Yes ☐ No

(2) Second petition, etc. ☐ Yes ☐ No

(3) Third petition, etc. ☐ Yes ☐ No

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

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12. State concisely every ground on which you claim that you are being held unlawfully.

**CAUTION:** If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date. For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

If you selected one or more of these grounds for relief, you must allege facts in support of the grounds listed below. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- ☒ (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: DENIAL OF EFFECTIVE ASSISTANCE OF COUNSEL

Supporting facts (tell your story briefly without citing cases or law): \_\_\_\_\_

1. Despite the fact that no competent evidence was admitted at trial which showed that Joseph Bertelli was stricken with cancer at the time of the offenses at issue, i.e., in and after August, 2000, and the Government only asserted in opening statement and in closing argument that he was a cancer survivor, i.e., that he had previously suffered from cancer at one time in the past and had thereafter recovered, counsel for Petitioner-Defendant failed properly to move under Rule 29 for dismissal of the vulnerable victim enhancements, and further erroneously admitted in closing argument that Mr Bertelli was a cancer victim, despite the undisputed absence of any such evidence, thus directly causing a 2-level increase in sentencing imposed on Petitioner-Defendant;

2. Counsel for Petitioner-Defendant never requested special jury instructions defining "vulnerable victim" or "multiple victim" to enable the jury to reach the conclusion that Mr. Bertelli was not a victim, let alone a vulnerable victim, which if requested, would have given the jury proper criteria to acquit Defendant on such enhancements based on the undisputed evidence, and thus directly causing a 2-level increase in sentencing imposed on Petitioner-Defendant;

3. Counsel for Petitioner-Defendant failed to object to the unfounded and incompetent testimony from documents they had never seen, authored or prepared of Government witnesses Cynthia Chavez of Wells Fargo Bank and Kelly Sanford of the Federal Reserve Bank in Kansas City, that a certain wire transfer had occurred in August, 2000, and counsel further failed to cross-examine Ms. Sanford at all on her lack of competency, permitting such evidence to be admitted un rebutted, thus directly supporting the first charge/count of wire fraud, which led to the jury's verdict and sentence under attack herein;

4. Counsel for Petitioner-Defendant, despite the admonishment in advance by the trial judge in doing so would open up the Petitioner-Defendant to cross-examination, nonetheless called Petitioner-Defendant to the stand on her case in chief in violation of her fifth-amendment right against self-incrimination, and exposed her to cross-examination by the Government in an unrelated alleged fraudulent factoring scheme involving a John Lind, as a result of which the Government was permitted to pose numerous questions to the Petitioner-Defendant during cross-examination which falsely and unfairly suggested she was had previously engaged in a recidivistic pattern of fraud, which directly resulted in her conviction by the jury on the three counts at issue; and;

5. Petitioner-Defendant's counsel failed to raise the failure of the Government to produce any indictment ever signed by the grand jury foreman as a complete defense to the charges, as mandated by Fed.R.Crim.Proc.R. 6<sup>c</sup>.

13. If any of the grounds listed in 12 A, B, C and D were not previously presented, state briefly what grounds were not presented, and give your reasons for not presenting them: \_\_\_\_\_

PRIOR DEFENSE COUNSEL FAILED TO RAISE AT TRIAL OR ON APPEAL

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

☒ Yes ☐ No

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attached herein:

(a) At a preliminary hearing: \_\_\_\_\_

(b) At arraignment and plea: Dana Cephas, Fed. P.D., 321 E. 2nd St., LA, CA 90012

(c) At trial: Dana Cephas, Fed. P.D., 321 E. 2nd St., LA, CA 90012

(d) At sentencing: Dana Cephas, Fed. P.D., and Jill Ginstling, Fed. P.D., 321 E. 2nd St., LA, CA 90012

(e) On appeal: Elizabeth Newman, Fed. P.D., 321 E. 2nd St., LA, CA 90012

(f) In any post-conviction proceeding: Elizabeth Newman, Fed. P.D., 321 E. 2nd St., LA, CA 90012

(g) On appeal from any adverse ruling in a post-conviction proceeding: Elizabeth Newman, addresse above Ron Gold (substituted into 2nd appeal while pending), address above.

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court at approximately the same time?

☒ Yes ☐ No

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

☐ Yes ☒ No

(a) If so, give the name and location of the court which imposed sentence to be served in the future: \_\_\_\_\_

(b) Give the date and length of sentence to be served in the future: \_\_\_\_\_

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed sentence to be served in the future?

☐ Yes ☐ No

WHEREFORE, movant prays that the court grant him all relief to which he may be entitled in this proceeding.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on

5/17/07  
Date

Rita Marie Lovelle  
Signature of Movant